

ATTACHMENT B



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Susan M. Lessard

CHAIR

Cynthia S. Barocci
Executive Analyst

Terry Dawson
Office Specialist II

March 2, 2011

David Van Slyke, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

RE: Request to Stay Solid Waste Permit Revision Order re Juniper Ridge Landfill #S-020700-WD-W-M and Supplement the Record

Dear Mr. Van Slyke:

This is in response to the Request by the Penobscot Energy Recovery Company, LP ("PERC") and the Municipal Review Committee, Inc. ("MRC") dated February 28, 2011 to stay the Solid Waste Permit Revision Order re: Juniper Ridge Landfill #S-20700-WD-W-M and to Supplement the Record.

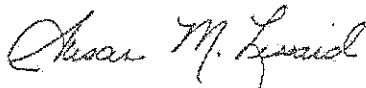
Pursuant to 38 M.R.S. § 344(8), a license granted by the Commissioner is effective when the Commissioner signs the license. A Commissioner's final license decision may be appealed either directly to court, 38 M.R.S. § 344(2-A) or to the Board, 38 M.R.S. § 341-D(4). Given that the statutory and regulatory scheme governing appeals to the Board does not provide any procedure or criteria for the Board to consider or grant a stay of a Commissioner's license decision, the Board lacks the authority to stay such a decision. Therefore, your request for a stay of the license revision is denied.

A request to supplement the record, along with the proposed supplemental evidence, must be submitted with the appeal pursuant to the Department's Rules Concerning the Processing of Applications and Other Administrative Matters, Chapter 2, Section 24(B)(2) and (5). Accordingly, the request to supplement the record is untimely. Furthermore, the evidence could have been presented earlier in the licensing process, and was not brought to the attention of the Department at the earliest possible time. The affidavits and exhibits in your February 28, 2011 submission will not be considered by the Board, and your oral argument to the Board tomorrow may not include discussion of these items.

With respect to the staff's inclusion of the two tables in the Board packet entitled: "Juniper Ridge Landfill Waste Volume Summary" and "Juniper Ridge Landfill – Tracking of Some Categories of Waste" dated January 27, 2011, and the reference to them which appears on page 11 of the Draft Order, staff has provided this data in direct response to an issue raised in the appeal in accordance with provisions of Chapter 2, section 24(B)(5). The tables include data from September – December 2010. If any party wants to comment on the significance of this data, the party may do so in oral argument at the Board meeting. Other than comments on this data, the oral argument to the Board is limited to evidence in the established record on appeal, and may not include the evidence in your February 28, 2011 submission.

If you have any questions on this decision, you may contact Cynthia Bertocci at 287-2452 or Nancy Macirowski at 626-8868.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan M. Lessard".

Susan M. Lessard, Chair